

REMARKS

The Office Action of January 15, 2004 has been reviewed and the comments therein were carefully considered. Claims 15, 17, 19-20, and 28-34 have been canceled in the current Office Action response. Claims 2-5, 7-10, 21-27, and 39-54 remain pending in the instant application. Claims 21-27 and 39-54 are allowed, and claims 2-5, 7-10, and 21-27 stand rejected.

Allowable Subject Matter

The Applicant would like to thank the Examiner for indicating allowable subject matter in claims 21-27 and 39-54.

Rejections under 35 USC § 102

Claims 15, 17, 20, 28, 30-32 and 34 stand rejected under 35 USC § 102(e) as being anticipated by Massengale (US Pat# 6,626,885). Claims 15, 17, 20, 28, 30-32, and 34 have been canceled in the current response rendering the rejection moot.

Rejections under 35 USC § 103

Claims 2-4, and 7-9, are rejected under 35 USC § 103(a) as being unpatentable over Ward (US Pat#s 5,713,923 and 5,978,702) in view of Elsberry (US Pat# 6,093,180). Of the rejected claims, currently amended claims 2 and 7 are independent claims.

With regard to independent claim 2, the Ward patents fail to disclose, teach, or suggest at least the claimed feature of “each of the microporous membrane sections including, a first end and a second end, the first end and the second end, coupled to the solid sections forming a continuous cross section of the tubular section, the tubular section having a substantially uniform diameter . . .”

(Emphasis added). Neither of the Ward patents nor the Elsberry reference disclose this claimed feature. The Ward patent specification in discussing the microporous portions provides that:

End 25 is provided with microporous portions 27-29 in the preferred embodiment (FIG. 6); however, multiple holes or slits within portions 27-29 could also be used. Additional details about portions 27-29 may be obtained from pending U.S. application Ser. No. 08/430,960 entitled "Intraparenchymal Infusion Catheter System," filed Apr. 28, 1995, in the name of Dennis Elsberry et al. and assigned to the same assignee as the present application.
('702 Patent at Column 4, lines 24-33; '923 Patent at Column 4, lines 18-26).

The additional details about microporous portions 27-29 can be found in Elsberry U.S. Patent Number 6,093,180 which was incorporated by reference into both Ward patents as indicated by the current Office Action. As shown in Elsberry, the microporous membrane is located in the catheter tip which is inserted into a lumen. For example, the Elsberry '180 patent (referring to Figure 3) states:

The catheter tip 24 has a generally tubular shape and is designed to fit snugly within the lumen 44 of the tubular portion 38. The catheter tip 24 has a lumen 45 to receive agent from the catheter lumen 44.
(Elsberry '180 Patent at Column 3, lines 31-34).

Therefore, as indicated by the above, Elsberry discloses a microporous membrane which is attached internally to a tubular section of the catheter and does not disclose the claimed feature of "each of the microporous membrane sections including, a first end and a second end, the first end and the second end, coupled to the solid sections forming a continuous cross section of the tubular section, the tubular section having a substantially uniform diameter. . . ." (Emphasis added). Similarly, Applicant submits that both Ward patents ('702 and '903) do not disclose the claimed feature.

The Office Action when discussing the above stated claim element states:

Each end of the microporous section is connected to an end of a solid catheter section. See Figure 6. This would result in a solid section through any part of the distal region.

(Office Action, page 3).

However, Applicants respectfully submit that Figure 6 does not disclose the claimed feature of “each of the microporous membrane sections including a first end and a second end, the first end and the second end coupled to the solid sections forming a continuous cross section of the tubular section, the tubular section having a substantially uniform diameter . . .” (Emphasis added).

Figure 6 of the Ward patents, only indicates that End 25 is provided with microporous portions 27-29. Applicants submit that microporous membrane section 27-29 of the Ward patents are similar to Elsberry '180 in which the microporous membrane sections contain a porous material which is attached internally to a tubular section of the catheter and does not disclose the claimed feature of “each of the microporous membrane sections including, a first end and a second end, the first end and the second end, coupled to the solid sections forming a continuous cross section of the tubular section, the tubular section having a substantially uniform diameter. . .” Therefore, for at least this reason, Applicant respectfully submits that independent claim 2 is in condition for allowance.

In addition to the above, claim 2 is allowable for at least one additional reason. Independent claim 2 includes the claimed feature of “a solid catheter tip.” The Office Action states and Applicant agrees that the Ward patents fail to disclose the claimed “solid catheter tip.” The Office Action states, however, that Elsberry discloses the claimed “solid catheter tip.” In particular, the Office Action states:

A radiopaque marker tip (46) is shown in figure 4. The rounded surface (46) of the tip provides a profile for minimizing tissue disruptions during insertion.
(Office Action, page 3).

Applicant respectfully submits that Figure 4 of Elsberry does not disclose “a solid catheter tip” as claimed in independent claim 2. Figure 4 of Elsberry describes a non-solid catheter tip 24 which includes a porous material. In addition to the porous material, a radiographic marker 46 is coupled to the non-solid catheter tip 24. Therefore, for at least this additional reason, Applicant respectfully submits that claim 2 is in condition for allowance. Dependent claims 3-5 which depend from claim 2 are allowable for at least the same reason as claim 2.

Independent claim 7 includes the claimed feature of “microporous membrane section including, a first end and a second end, the first end and the second end coupled to the solid section forming a continuous cross section of the tubular section, the tubular section having a substantially uniform diameter” Applicant submits that independent claim 7 is allowable for at least the same reasons as independent claim 2. Dependent claims 8-10 which depend from independent claim 7 are allowable for at least the same reason as claim 7.

Claims 5 and 10 are rejected under 35 USC § 103(a) as being unpatentable over Ward (US Pat#s 5,713,923 and 5,978,702) in view of Elsberry (US Pat# 6,093,180). Applicant submits that dependent claims 5 and 10 are allowable for at least the same reasons as the independent claims from which they ultimately depend.

Claims 15, 17, 20, 28, 30-32, 34 are rejected under 35 USC § 103(a) as being unpatentable over Deniega et al. (US Pat# 6,350,253). In this response, Applicant has canceled claims 15, 17, 20, 28, 30-32, and 34 rendering the rejection moot.

Claims 19 and 33 are rejected under 35 USC § 103(a) as being unpatentable over Deniega et al. (US Pat# 6,350,253) in view of Ward (US Pat#s 5,713,923 and 5,978,702). In this response, Applicant has canceled claims 19 and 33 rendering the rejection moot.

Claim 29 is rejected under 35 USC § 103(a) as being unpatentable over Deniega et al. (US

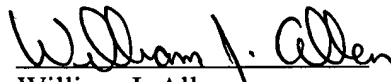
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Pat# 6,350,253) in view of Ward (US Pat#s 5,713,923 and 5,978,702). In this response, Applicant has canceled claim 29 rendering the rejection moot.

The Applicant respectfully submits that the instant application is in condition for allowance. Should the Examiner believe that a conversation with Applicant's representative would be useful in the prosecution of this case, the Examiner is invited and encouraged to call Applicant's representative.

Respectfully submitted,

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